CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 222.

LUCIAN WOODWORTH, FRANK D. BROWN, AND GEORGE N. CLAYTON, PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 8, 1901.

(18,014.)

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1 United States Circuit Court of Appeals, Eighth Circuit.

LUCIAN WOODWORTH, FRANK D. BROWN, and GEORGE N. CLAYTON, Plaintiffs in Error,
vs.
THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, Defendant in Error.

LUCIAN WOODWORTH, FRANK D. BROWN, and GEORGE N. CLAYTON, Appellants,
vs.
THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, Appellee.

On certificate from the United States circuit court of appeals for the eighth circuit.

The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Louis, Missouri, on this 27th day of December, 1900, hereby certifies that upon the record on file in said court in the above-entitled causes wherein Lucian Woodworth, Frank D. Brown and George N. Clayton are plaintiffs in error and The Northwestern Mutual Life Insurance Company is defendant in error, and Lucian Woodworth, Frank D. Brown and George N. Clayton are appellants and The Northwestern Mutual Life Insurance Company is appellee, and which causes are now pending before this court on writ of error to, and appeal from the circuit court of the United States for the District of Nebraska, the following facts appear, namely:

On August 26, 1896, the Northwestern Mutual Life Insurance Company filed its bill of complaint in the circuit court of the United States for the district of Nebraska against Lucian Woodworth and others to foreclose a mortgage, given by Woodworth and his wife to said company, upon certain real estate situated in the State of Nebraska. A decree on said bill was entered on December 3, 1896, in said circuit court, foreclosing the mortgage, directing that a master in chancery of the court sell the premises and upon confirmation of the sale by the court execute a deed to the purchaser and ordering that the purchaser of the premises at said sale be put in possession thereof and that any of the parties to said cause who might be in possession of said premises, or any person claiming under them or either of them, should deliver possession to the purchaser on
2 production of the master's deed of said premises and a certified copy of the order confirming the report of said sale, after such order had become absolute. On February 14, 1898, said real estate was sold by the master under said decree and was purchased at said sale by the Northwestern Mutual Life Insurance Company for $39,152, a sum less than the amount of the debt secured by the mortgage and the costs in the suit. The master made his report of

sale to the court on February 15, 1898. On March 15, 1898, said circuit court confirmed said report of sale, directed that the master convey said real estate to the purchaser at said sale, awarded a writ of possession to put said purchaser in possession thereof and rendered a deficiency judgment for the sum of $2,696.90 and interest in favor of the Northwestern Mutual Life Insurance Company and against said Woodworth. On March 30, 1898, said Woodworth was allowed an appeal from this order of confirmation to the United States circuit court of appeals for the eighth circuit and thereafter, on April 8, 1898, he filed his appeal bond in the sum of $5,500 with Frank D. Brown and George N. Clayton as sureties thereon, which bond was conditioned for the payment of "all damages and costs which it (the Northwestern Mutual Life Insurance Company) may incur by reason or on account of said appeal" and worked a supersedeas of the order of confirmation. The United States circuit court of appeals on January 24, 1899, affirmed said order of confirmation of sale and on March 29, 1899, its mandate was duly issued to, and filed in said circuit court. On June 19, 1899, the deficiency judgment and the costs taxed in said cause in the United States circuit court of appeals were fully paid and satisfied. On September 16, 1899, the defendant in error, The Northwestern Mutual Life Insurance Company, filed its petition in said circuit court against Lucian Woodworth, and the sureties on said appeal bond, Frank D. Brown and George N. Clayton, alleging, among other things,
3 that the possession and use of said real estate was withheld from said company by reason of the superseding of the order of March 15, 1898, during the pendency of the appeal therefrom, that the value of such use and possession during the pendency of said appeal amounted to $3,750, and praying that Woodworth and the sureties Brown and Clayton be cited to appear and show cause why judgment *judgment* should not be summarily entered against them for said $3,750 and interest and costs. On September 16, 1899, an order to show cause against said Woodworth, Brown and Clayton was made on said petition as prayed for therein and on October 2, 1899, they filed their showing in resistance to said petition, alleging that "damages for the rents and profits of the premises, or use and detention thereof pending appeal, are not recoverable on a supersedeas bond, and that the bond in question was not given as security, or for the payment of rents and profits, or the use or detention of the property pending appeal" and praying for the dismissal of said petition. On December 9, 1899, said circuit court entered a judgment and decree against the plaintiffs in error, Woodworth, Brown and Clayton, as prayed for in said petition. Afterwards, in due season, to wit, on January 31, 1900, said last-named judgment and decree having been rendered on December 9, 1899, the record in the proceedings on said petition was removed by writ of error and also by appeal to the United States circuit court of appeals for the eighth circuit where it still remains, the cause being as yet undecided.

And the said United States circuit court of appeals hereby certi-

es, that to the end that it may properly decide said case, it desires he instruction of the Supreme Court of the United States upon the ollowing question or proposition of law arising therein which is uly raised and presented by the record in said case, said question being as follows:

Is the obligee in a bond which supersedes an order confirming a sale of real estate and directing the immediate execution f a deed and delivery of possession thereof to the purchaser entitled fter that order has been affirmed on the appeal to recover as damges for the breach of the obligation of the bond the value of the se and possession, that is to say in this case, the rents and profits f the real estate during the time the purchaser is kept out of the possession and use of the real estate by the supersedeas bond and he appeal in which it was allowed?

In witness whereof, the undersigned judges of the said United States circuit court of appeals for the said eighth circuit have hereunto set their hands, this twenty-seventh day of December, 1900, at St. Louis, Missouri, and hereby order and direct that the foregoing certificate be filed in said circuit court of appeals, and by the clerk of said court be duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL,
WALTER H. SANBORN,
ELMER B. ADAMS,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

5 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the cases of Lucian Woodworth *et al.*, plaintiffs in error, *vs.* The Northwestern Mutual Life Insurance Company, No. 1424, December term, A. D. 1900. and Lucian Woodworth *et al.*, appellants, *vs.* The Northwestern Mutual Life Insurance Company, No. 1425, December term, A. D. 1900, was duly filed and entered of record in my office by order of said circuit court of appeals and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this twenty-seventh day of December, A. D. 1900.

JOHN D. JORDAN,
Clerk United States Circuit Court of of *Appeals for the Eighth Circuit.*

[Endorsed:] U. S. circuit court of appeals, eighth circuit. December term, 1900. Nos. 1424 and 1425. Lucian Woodworth *et al.*, plaintiffs in error and appellants, *vs.* Northwestern Mutual Life Insurance Company. Certificate of a question to the Supreme Court of the United States. Filed Dec. 27, 1900. John D. Jordan, clerk.

Endorsed on cover: Certificate. File No. 18,014. U. S. C. C. of appeals, eighth circuit. Term No. 222. Lucian Woodworth, Frank D. Brown, and George N. Clayton, plaintiffs in error & appellants, *vs.* The Northwestern Mutual Life Insurance Company. Filed January 5th, 1901.